

1
2
3
4
5
6

FILED	RECEIVED
ENTERED	SERVED
COUNSEL/PARTIES OF RECORD	
OCT 10 2017	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANDREW AREVALO,

Plaintiff,

vs.

JEFF CASTRO et al.,

Defendants.

3:15-cv-00407-RCJ-WGC

ORDER

This is a prisoner civil rights case arising out of the use of a shotgun to break up a fight between two inmates. On April 27, 2017, the Court dismissed much of the Amended Complaint, leaving only the claims asserted against correctional officers Reynaldo-John Ramos, Jeff Castro, and Isaiah Smith. (Order, ECF No. 85.) On August 9, 2017, the parties filed a stipulation to dismiss all claims against all defendants with prejudice, which the Court signed and entered on August 15. Plaintiff now requests an award of attorneys' fees by way of unopposed motion. (ECF No. 89.) For the reasons given herein, the Court grants the Motion in part.

I. LEGAL STANDARDS

"42 U.S.C. § 1988(b) authorizes district courts to award the 'prevailing party,' in any suit under 42 U.S.C. § 1983, a 'reasonable attorney's fee.'" *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). A prevailing party "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Lefemine v. Wideman*, 568

1 U.S. 1, 5 (2012). “The district court has a great deal of discretion in determining the
2 reasonableness of the fee and, as a general rule, [the Court of Appeals] defer[s] to its
3 determination, including its decision regarding the reasonableness of the hours claimed by the
4 prevailing party.” *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). Despite this broad
5 discretion, however, “[i]t remains important . . . for the district court to provide a concise but
6 clear explanation of its reasons for the fee award.” *Hensley v. Eckerhart*, 461 U.S. 424, 437
7 (1983).

8 **II. ANALYSIS**

9 This motion is unopposed. Plaintiff represents in his motion that the parties have
10 stipulated that Plaintiff is the prevailing party, and that Defendant State of Nevada has assented
11 to the fee award sought in the motion. These concessions were presumably made as part of the
12 parties’ settlement agreement, by which Plaintiff received a sum of \$99,000 in exchange for a
13 full dismissal of his case with prejudice.

14 **A. Plaintiff as Prevailing Party**

15 The Court finds that Plaintiff was a prevailing party within the meaning of section 1988,
16 not merely because of the parties’ stipulation to that fact but because Plaintiff received
17 substantial monetary relief from the settlement. “[T]o qualify as a prevailing party, a civil rights
18 plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an
19 enforceable judgment against the defendant from whom fees are sought, or comparable relief
20 through a consent decree or settlement.” *Farrar v. Hobby*, 506 U.S. 103, 111 (1992) (emphasis
21 added) (citations omitted). It is well settled in the Ninth Circuit that a litigant may be deemed a
22 prevailing party when he enters into a legally enforceable settlement agreement. *See, e.g.*,
23 *Gonzalez*, 729 F.3d at 1202; *Carbonell v. I.N.S.*, 429 F.3d 894, 899 (9th Cir. 2005). Here,
24 Plaintiff did not succeed on all of his claims or against all Defendants. However, for the claims

1 on which he did prevail, he received significant relief. See *Hensley*, 461 U.S. at 433 (“[P]laintiffs
2 may be considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on any
3 significant issue in litigation which achieves some of the benefit the parties sought in bringing
4 suit.”).

5 **B. Calculation of the Lodestar**

6 The Court next turns to whether the fee requested is reasonable. The Ninth Circuit has
7 laid out the process for making this determination in some detail:

8 To determine the amount of a reasonable fee under § 1988, district courts
9 typically proceed in two steps. First, courts generally apply the “lodestar” method
10 to determine what constitutes a reasonable attorney’s fee. Second, the district
court may then adjust the lodestar upward or downward based on a variety of
11 factors. . . . A district court, using the lodestar method to determine the amount of
12 attorney’s fees to award, must determine a reasonable number of hours for which
13 the prevailing party should be compensated. . . . Of course, in some cases, the
14 prevailing party may submit billing records which include hours that could not
15 reasonably be billed to a private client and, therefore, are not properly included in
16 a § 1988 fee award. For example, records may contain entries for hours that are
17 excessive, redundant, or otherwise unnecessary. Because a reasonable attorney’s
18 fee would not include compensation for such hours, . . . the court may conduct an
19 hour-by-hour analysis of the fee request, and exclude those hours for which it
20 would be unreasonable to compensate the prevailing party.

21
22
23
24 *Gonzalez*, 729 F.3d at 1202 (citations omitted).

25 Here, the Court finds that the hours billed by Plaintiff’s counsel Mr. Vogelman are
26 generally reasonable. Mr. Vogelman billed fewer than sixty hours on this case over the course of
27 nearly nine months, which time included, *inter alia*, regularly communicating with Plaintiff and
28 opposing counsel, drafting an amended complaint, drafting a discovery plan, coordinating with
29 opposing counsel on a case management report, defending a motion to dismiss and/or motion for
30 summary judgment, and obtaining a favorable settlement for his client. While this case was not
31 overly complex, factually or legally, Mr. Vogelman’s hours are broadly commensurate with the
32 work required.

1 However, the Court takes note that more than a quarter of the total hours recorded by Mr.
2 Vogelman represent nonproductive travel time between New Hampshire and Nevada (15.6 hours
3 out of a total 58.9). (*See* Vogelman Billing Records 2, ECF No. 89-3.) It is within the Court's
4 discretion to award fees under section 1988 for travel time, *see Davis v. City & Cty. of San*
5 *Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992), *opinion vacated in part on other grounds*, 984
6 F.2d 345 (9th Cir. 1993), or to reduce that portion of the fee attributable to travel time, *see*
7 *Yamada v. Snipes*, 604 F. App'x 579, 580 (9th Cir. 2015). However, courts are especially
8 reluctant to award fees for long-distance travel where an insufficient showing has been made that
9 travel by out-of-state counsel was actually necessary. *See, e.g., Comcast*, 2010 WL 3781768, at
10 *7; *Stanford v. Ocwen Federal Bank, FSB*, 2012 WL 37383, *2 (E.D. Cal. Jan. 6, 2012)
11 (reducing fees for travel time where telephonic appearance was possible). That reluctance is
12 consistent with the need for the Court to guard against awarding fees that "were self-imposed
13 and avoidable." *Comcast*, 2010 WL 3781768, at *5 (citing *Tirona v. State Farm Mut. Auto. Ins.*
14 *Co.*, 821 F. Supp. 632, 636 (D. Haw. 1993)).

15 Mr. Vogelman has not attempted to make a showing that his travel to Nevada was
16 unavoidable. His billing records reveal that the only work he did while in Nevada was to meet
17 with Plaintiff for 1.8 hours and review a court order for twelve minutes. The Court must
18 conclude, therefore, that the purpose of Mr. Vogelman's trip was to have a face-to-face meeting
19 with his client. However, the billing records also reveal that Mr. Vogelman was in frequent
20 contact with his client by mail, email, and telephone. Mr. Vogelman has asserted—and the Court
21 accepts—that Plaintiff retained him as counsel because Plaintiff had difficulty with finding
22 representation in Nevada. However, after looking through Mr. Vogelman's billing records, the
23 Court is at a loss as to why Mr. Vogelman was unable to conduct his client meeting over the
24 phone. Indeed, Mr. Vogelman entered two telephonic appearances in this case, (*see* ECF Nos.

1 66, 83), so why was it necessary to expend such a significant amount of time and money on
2 traveling to Nevada only to talk to his client? Unfortunately, Plaintiff's motion leaves this
3 important question unanswered. Moreover, the fee request for Mr. Vogelman's travel time is
4 further complicated by the appearance that Mr. Vogelman had other business in Nevada during
5 the same trip. Mr. Vogelman arrived in Nevada on December 6, 2016, and met with Plaintiff on
6 December 7, but did not return home to New Hampshire until December 10. Surely the Court
7 cannot count all of Mr. Vogelman's travel time as billable client hours if he had other unrelated
8 reasons for visiting Nevada.

9 Therefore, without more information concerning the necessity of the travel and a fuller
10 understanding of all of Mr. Vogelman's reasons for taking the trip, the Court cannot conclude
11 that it is reasonable for Mr. Vogelman to include his travel time among the hours spent on this
12 case. Accordingly, the Court finds the reasonable hours for this case to be 43.3 for Mr.
13 Vogelman, and 1.5 for Ms. Davidson.

14 The Court also finds that the hourly rates charged by Mr. Vogelman are reasonable. For
15 his own work, Mr. Vogelman has applied a rate of \$219 per hour, the maximum rate permissible
16 under the Prison Litigation Reform Act (PLRA). *See* 42 U.S.C.A. § 1997e(d)(3) (limiting
17 attorneys' fees under the PLRA to 150% of the statutory hourly rate for court-appointed
18 counsel); Judiciary Fiscal Year 2017 Congressional Budget Summary 37 (Feb. 2016),
19 [http://www.uscourts.gov/sites/default/files/fy_2017_federal_judiciary_congressional_budget_su](http://www.uscourts.gov/sites/default/files/fy_2017_federal_judiciary_congressional_budget_summary_0.pdf)
20 mmary_0.pdf (stating that the maximum rate authorized by statute is \$146 per hour). This is
21 reasonable in light of the fact that he is an experienced attorney with a customary rate of \$450
22 per hour. For Ms. Davidson, a paralegal, Mr. Vogelman has applied a rate of \$125 per hour. This
23 is within a normal range and represents a reasonable fee. *See Perez v. Cate*, 632 F.3d 553, 557

24

1 (9th Cir. 2011) (holding that the PLRA does not cap paralegal fees at a lower hourly rate than the
2 rate for court-appointed counsel).

3 In light of the above, the Court calculates the lodestar as follows:

<u>Attorney/Staff</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
A. Vogelman	43.3	\$219	\$9,482.70
J. Davidson	1.5	\$125	\$187.50

7 Accordingly, the Court finds the lodestar amount to be \$9,670.20.

8 **C. Adjustments to the Lodestar**

9 The lodestar amount is presumptively reasonable. *Cunningham v. County of Los Angeles*,
10 879 F.2d 481, 488 (9th Cir. 1988). The Court may adjust the lodestar based on a number of
11 additional factors not subsumed in the initial calculation. See *Van Gerwen v. Guarantee Mut.*
12 *Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). However, the Court should adjust the lodestar
13 only in “rare and exceptional cases.” *Fischer v. SJBP.D. Inc.*, 214 F.3d 1115, 1119 n. 4 (9th Cir.
14 2000) (quoting *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478 U.S. 546,
15 565 (1986)). Here, Plaintiff addresses the additional factors only very briefly in his motion, and
16 does not actually request a multiplier of any kind. The Court finds that circumstances do not
17 exist to warrant adjusting the lodestar. Therefore, the Court will award the fees requested by
18 Plaintiff, with the sole exception of those fees requested for long-distance travel time.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

CONCLUSION

IT IS HEREBY ORDERED that Plaintiff's motion for attorneys' fees (ECF No. 89) is GRANTED IN PART. Consistent with the foregoing analysis, Plaintiff is hereby awarded reasonable attorneys' fees in the amount of \$9,670.20.

5 IT IS FURTHER ORDERED that Plaintiff shall submit a proposed form of judgment
6 within thirty days from the entry of this order.

7 IT IS SO ORDERED. *October 10, 2017.*


ROBERT C. JONES

ROBERT C. JONES
United States District Judge